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Ethnic Groups-Blacks-Civil War

## **BLACK SOLDIERS, US ARMY, 1862-65**

A Working Bibliography of MHI Sources

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### **INTRODUCTORY NOTE:**

There are some discrepancies concerning the total number of black units in the Civil War. As of 15 Jul 1865, the Bureau of Colored Troops reported 149 units on hand (139 regiments and 10 companies of light artillery) and, furthermore, indicated this was the peak number. However, additional black units had been organized but were either discontinued or, for the most part, redesignated. No official source noted the total number of African-American units. Unofficial sources place that total number at 166 or 167 (see Boatner and Phisterer cited below), but counts of the black units listed in the Volunteer Register and Dyer (cited below) do not tally with those numbers. To resolve the number problem will probably require careful research in the published sources and records of the Adjutant General's Bureau of Colored Troops now in custody of the National Archives.

Part of the problem may lie in terminology. "United States Colored Troops" (USCT) designated those black soldiers recruited and organized into units by the Bureau of Colored Troops. However, the Bureau did not exist until May 1863. African-American units already raised eventually came under supervision of the Bureau, usually by a procedure involving the unit's reorganization and a change in its name and number. Exceptions to name-changing were the 54<sup>th</sup> and 55<sup>th</sup> Massachusetts Infantry and the 29<sup>th</sup> and 30<sup>th</sup> Connecticut Infantry Regiments, which retained their state designations and remained as state units temporarily in the service of the United States. All other USCT units were directly in the service of the United States and not "on loan" to the United States from any state.

### **LEGAL STATUS OF BLACK TROOPS**

Recruitment of soldiers into the Regular Army in Apr 1861 was governed by Regulations for the Army of the United States, 1857. According to Paragraph 1299, an enlistee had to be a "free white male person above the age of eighteen and under thirty-five years, being at least five feet four and a half inches high, effective, able bodied, sober, free from disease, of good character and habits, and with a competent knowledge of the English language." Initial calls to expand the Regular Army with militia commenced in Apr 1861 under legal authority of the **Militia Act of 28 Feb 1795**, and the **District of Columbia Militia Act of 3 Mar 1803**. See:

Shannon, Fred A. The Organization and Administration of the Union Army, 1861-1865. Vol. I. Cleveland: Clark, 1928. pp. 27 ff. E491.S52v1.

U.S. War Dept. The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies. 130 vols. Wash, DC: GPO, 1880-1901. E464.U6.  
See Series I, Vol. 51, Pt 1, pp. 321 ff. and Ser III, Vol. 1, pp. 68 ff.

The **1795 act** prescribed conditions under which the President could call state militia into federal service, but did not prescribe conditions of enlistment. However, Sec 4 stated that "the militia employed in the service of the United States shall be subject to the same rules and articles of war as the troops of the United States..." (Callan, p. 78). The **1803 act** authorized establishment of the District of Columbia militia. Sec 6 enrolled "every able-bodied white male, between the ages of eighteen and forty-five years..." (Callan, p. 113).

A third pertinent law, not invoked in Apr 1861, was the **Act of 8 May 1792** establishing a uniform militia of the U.S. It called for enrollment of "each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years..." (Callan, pp. 64-65). One interpretation of this last act was that it did not specifically exclude blacks, but only required enrollment of whites, thus avoiding the black question. However, several states interpreted the law to mean exclusion of blacks. See Chap 2, Jack D. Foner, Blacks and the Military in American History (NY: Praeger, 1974; E185.63F64).

Interestingly, Attorney General Edward Bates observed in 1864 that Congress had never "prohibited the enlistment of free, colored men into either branch of the national military service." The insertion of the restrictive adjective "white" into the pre-Civil War Army Regulations (1821-1857) was a "striking instance of legislation by an executive department," according to Colonel William Winthrop, military law expert. The Bates and Winthrop quotes are from Foner, p. 287, while the three Congressional Acts noted above appear in John F. Callan, Military Laws of the United States (Baltimore: Murphy, 1858; UB500.1858.A11). To determine whether or not individual states permitted enlistment of blacks in Apr 1861 would require examination of state, not federal, militia laws.

**-Conscripting Freedman, 1863**

The initial effort of General David Hunter, Dept of the South, to draft (or, rather, impress) blacks occurred 9 May 1862, that is, before the President or Congress had faced the issue squarely. Recruiting black volunteers was permissible within War Dept guidelines, as seen in Secretary Cameron's letter of 14 Oct 1861 to Gen T.H. Sherman (Cornish, pp. 18 & 36). However, the War Dept could not countenance Hunter's unilateral emancipation proclamation and concomitant draft, particularly after his action received wide publicity.

A few months later, the President authorized arming freed slaves (Second Confiscation Act of July 1862) and on 3 Mar 1863, Congress passed the Enrollment Act, which authorized conscription of able-bodied male citizens between the ages of 20 and 45. Three days after the Act passed, Gen Hunter again attempted to draft liberated blacks in his jurisdiction.

What authority did Hunter have for such a second draft? Could blacks in occupied Southern states have been considered U.S. citizens and, thus, eligible for the draft? Slaves freed before the war very well may have been accorded all the rights of federal citizenship and also of citizenship of their individual states, but citizenship for slaves freed by the war was not federally recognized until 1868 (14<sup>th</sup> Amendment). Therefore, one can ask, what was the legal status of a war-freed Southern slave from the moment of liberation until 1868, or, at least, until a "friendly" government was established in his rebellious state? Could marital governors confer citizenship rights, such as the "right" to be drafted? Resources:

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See Chap II.

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